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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/018,769

12/21/2001

Sandrine Decoster

05725.0993

2464

22852

7590

01/16/2007

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
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EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1617

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/018,769

Applicant(s)

DECOSTER ET AL.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18, 20-28 and 30-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18, 20-28 and 30-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

In response to the pre-appeal request for review filed on September 15, 2006, a conference was held on October 24, 2006. In view of the panel decision, the rejections made in the final office action dated May 17, 2006 are hereby withdrawn, and prosecution is reopened. New rejections are set forth below.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 18, 20-28, and 30-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsumatsu et al. (WO 99/13830) ("Mitsumatsu") in view of Oshima (JP401009916A) and Sebag et al. (WO 98/03155) ("Sebag").**

Mitsumatsu teaches shampoo formulations comprising trizole, an optical brightener, and either stearyl alcohol or behenyl alcohol. See Examples 3-5. Detergent surfactants such as ammonium lauryl sulfate and cocamidopropylbetaine are used within the claimed amount. See instant claims 37-39. Conditioning agents such as silicone emulsion are used. See instant claims 40-44. See p. 45, lines 9 – 14 for the method of use. See instant claims 49-51.

While Mitsumatsu suggests using cetyl alcohol, stearyl, and behenyl alcohol either individually or as a mixture in p. 24, lines 16 – 20, the reference does not provide a specific example which concurrently uses stearyl alcohol and behenyl alcohol in the ratio as required by instant claim 18.

Oshima teaches a shampoo containing anionic and/or ampholytic surfactant and stearyl alcohol and behenyl alcohol as essential components, wherein the amounts of stearyl (C18) alcohol and behenyl (C22) alcohol are 0.5-5 [sic] wt % and 0.75-7.5 wt %, respectively, and the weight ratio of the alcohols is 1:1.15-4.5. See English abstract; instant claim 18. The shampoo is said to have "beautiful appearance and excellent storage stability, is capable of imparting pearl luster to hair and has excellent hair-conditioning effect".

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify teaching of Mitsumatsu by using stearyl and behenyl alcohols in the weight ratio as motivated by Oshima, because 1) Mitsumatsu suggests using stearyl and behenyl alcohols within the weight amount which overlaps with Oshima; and 2) Oshima teaches the combination of the two fatty alcohols in a specific ratio in a shampoo formulation which is stable and imparts excellent hair conditioning effect. The skilled artisan would have had a reasonable expectation of successfully producing a stable shampoo formulation.

Mitsumatsu and Oshima fails to teach the opacifier/pearlescent recited in claims 18 and 20--25.

Sebag teaches hair washing and conditioning compositions comprising a dialkyl ether of formula (II) in instant claim 22, and preferably distearyl ether. See English equivalent of Sebag, US 6162423, col. 2, lines 26 – 53; col. 1, lines 4- 66. The reference teaches that the use of at least one fatty dialkyl ether used in the instant invention renders a washing foaming compositions having insoluble silicones and

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surfactants, pearlescent effect, good homogeneity, and improved stability while maintaining foaming power. See Example 1, which comprises stearyl alcohol, suggesting the compatibility of the Sebag composition with higher fatty alcohols.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the shampoo composition of the combined references, which comprises silicone emulsion, by adding distearyl ether in the composition as motivated by Sebag, because the latter teaches that the compound renders insoluble silicone and detergent-containing foam compositions pearlescent effect, good homogeneity, and improved stability while maintaining foaming effect. The skilled artisan would have had a reasonable expectation of successfully producing silicone-containing shampoo compositions with pearlescent effect, good homogeneity with improved stability and foams.

### ***Response to Arguments***

Applicant's arguments with respect to claims 18, 20-28, and 30-51 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

No claims are allowed.

The full translation of the Oshima patent will be made available in the next Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605.

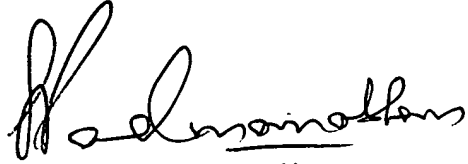
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The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina C. Yu  
Patent Examiner



SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER